

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*

Debtors.¹

PROMESA
Title III

Case No. 17-BK-3283-LTS

(Jointly Administered)

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO

as representative of

PUERTO RICO ELECTRIC POWER AUTHORITY,

Debtor.

PROMESA
Title III

Re: ECF Nos. 9419, 9752

Case No. 17-BK-4780-LTS

**This Pleading relates only to PREPA,
and shall be filed in the lead Case No.
17-BK-3283-LTS, and PREPA's Title
III case (Case No. 17-BK-4780-LTS)**

DECLARATION OF GARY GERMEROTH

Pursuant to 28 U.S.C. § 1746, I, Gary Germeroth, hereby declare as follows under penalty
of perjury under the laws of the United States of America:

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

1. I am a Managing Director of Filsinger Energy Partners (“FEP”). I currently serve as an advisor to the Puerto Rico Electric Power Authority (“PREPA”), a position I have held since on or around December 7, 2017. I am over 18 years of age.

2. In my role as an advisor to PREPA, I report directly to Todd Filsinger, the Senior Managing Director of FEP, who in turn reports directly to PREPA’s Executive Director, José Ortiz. The FEP team at PREPA has been historically comprised of approximately 8 to 10 members onsite at PREPA on a regular full-time basis. FEP personnel and I routinely and regularly interface and meet with members of PREPA’s executive, finance, treasury, project management, customer service, planning, information technology and generation directorates. In addition, members of the FEP team regularly assist and facilitate various projects undertaken by these directorates and interact with PREPA employees.

3. In my role as an advisor to PREPA, I act as a key liaison between PREPA, the Federal Government, Puerto Rico entities and creditor constituencies providing on-going financial and operational activity updates. I actively manage PREPA’s cash and develop the forward cash flow projections for wholesale, retail, and transmission and distribution operations.

4. I submit this declaration in support of the *Reply of Puerto Rico Fiscal Agency and Financial Authority to Cobra Acquisitions LLC’s Omnibus Objection to Fee Applications Filed by Professionals and Request to Increase Holdback Amount*.

5. In my roles, I am familiar with certain of the books, records, policies and documents maintained by PREPA and FEP (the “Business Records”). The Business Records are kept by PREPA and FEP in the regular course of their respective businesses and are made at or near the time of the events appearing therein by, or from information provided by, persons with knowledge of the activity. It is the regular course of business for PREPA and FEP to make such

records. I have personal knowledge of the matters stated herein or have acquired such knowledge by personally examining the Business Records kept by PREPA and FEP. If called upon to testify as to the matters stated here, I would and could competently testify thereto.

I. COBRA'S INVOICES REMAIN UNPAID BECAUSE PREPA DISPUTES THEM.

6. Following Hurricanes Irma and Maria, on October 19, 2017, PREPA and Cobra entered into the Emergency Master Service Agreement for PREPA's Electrical Grid Repairs – Hurricane Maria ("First Contract") for Cobra to perform emergency "storm restoration services" for \$200 million. Through five subsequent amendments, the contract amount for the First Contract was increased to \$945 million.

7. On May 26, 2018, PREPA and Cobra entered into the Master Services Contract for PREPA's Electrical Grid Repairs - Hurricane Maria ("Second Contract," and with the First Contract, the "Cobra Contracts"), for Cobra to perform restoration and reconstruction services in addition to its emergency storm repair services under the First Contract, in the amount of up to \$900 million.

8. To date Cobra has invoiced PREPA for approximately \$1.3 billion, of which PREPA has paid roughly \$1.1 billion. In its Objection ¶10 and ¶11, Cobra states that approximately \$244 million (less than 18% of the total invoiced) remains outstanding. As part of PREPA's ordinary invoice review processes, PREPA disputes hundreds of Cobra invoices with a total face value of over \$200 million (representing over 80% of what Cobra claims is outstanding). PREPA has also refused to pay any amounts outstanding to Cobra at this time, pending resolution of an ongoing criminal proceeding against high-ranking Cobra and FEMA officials.

II. PREPA'S CASH ON HAND IS INCREASING.

9. PREPA's refusal to pay outstanding invoices to Cobra is not indicative of a lack of sufficient cash flows.

10. In early 2018, in the aftermath of hurricanes Maria and Irma, PREPA was facing liquidity struggles and had to obtain a \$300 million loan from the Commonwealth to PREPA. *See Order (A) Authorizing Debtor Puerto Rico Electric Power Authority To Obtain Postpetition Financing, (B) Providing Superpriority Administrative Expense Claims, And (C) Granting Related Relief.* [ECF No. 744].

11. On or around March 8, 2019, PREPA repaid all of the outstanding amounts under the debtor-in-possession loan from the Commonwealth. At that time, PREPA had approximately \$314.9 million in unrestricted cash on hand. As of February 14, 2020, PREPA had approximately \$488.5 million in unrestricted cash on hand—\$173.6 million more unrestricted cash on hand than PREPA had on March 8, 2019.

12. Between November 15, 2019 and February 21, 2020, PREPA generated revenues of approximately \$45 million to \$80 million a week. PREPA continues to pay its ordinary course vendors.

III. PREPA'S RELIANCE ON FEDERAL FUNDING TO PAY FOR EMERGENCY REPAIR COSTS DOES NOT INDICATE INSOLVENCY.

13. PREPA relies on FEMA funding to pay for repairs necessitated by a major, unprecedented natural disaster. These disaster repair costs are separate from PREPA's ordinary course business operations. PREPA's reliance on FEMA funding to rebuild the power grid following Hurricanes Maria and Irma is not any indication of insolvency or inability to continue ordinary course operations.

14. PREPA does not rely on FEMA funding to pay for its ordinary course business expenses, nor could it. Disaster relief funds received from FEMA are restricted and cannot be used on ordinary operational expenses. As such, the disaster assistance funds PREPA receives

from the Federal Government are earmarked for disaster relief and cannot be used to pay ordinary course vendors.

I declare under penalty of perjury under 28 U. S. C. § 1746 that the foregoing is true and correct.

Executed this 25th day of February 2020 at Denver, Colorado.



A handwritten signature in black ink, appearing to read "Gary Germeroth". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Gary Germeroth